THE RENDITION OF FUGITIVE SLAVES.

THE ACTS OF 1793 AND 1850, AND THE DECISIONS OF THE SUPREME COURT SUSTAINING THEM.

THE DRED SCOTT CASE—WHAT THE COURT DECIDED.

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OBEY THE CONSTITUTION—PRESERVE THE UNION.

PART I.

FUGITIVE-SLAVE COMPACTS AND LAWS.

Domestic slavery having existed in some form or other in almost every State, ancient and modern, the rendition of fugitive slaves is a usage which obtained at a very early period.

The prohibition against delivering them up, which is found among the civil laws of the early Hebrews, applied only to slaves fleeing from foreign States; and this, too, is the rule now in the United States and other governments in the absence of treaty stipulation.

The harboring of fugitive slaves by one of the Greek confederate States was an immediate cause of the long and desolating Peloponesian war.

The Apostle Paul restored a fugitive slave to Onesimus, because, although convenient to keep him for his own use, he would do nothing without the consent of the owner.

The records of the courts of France in the ninth century contain precedents of the trial or hearing of fugitive-slave cases.

THE NEW ENGLAND FUGITIVE-SLAVE LAW OF 1643.

In our own country the comity and good faith which require this extradition were recognized and carried out a few years after its first settlement in New England. The "Articles of Confederation," &c., between the New England colonies, dated May 19, 1643, section 8, provide as follows:

"It is also agreed that if any servant *run away from his master* into any of these confederate jurisdictions, that, in such case, *upon certificate* of one magistrate in the jurisdiction out of which the said servant fled, *or* upon due proof, the said servant *shall be delivered up* either to his master or *any other that pursues* and brings such certificate or proof."

Here is the germ of every subsequent provision upon the subject, especially as to the mode of proving service *by certificate*. No jury trial was thought of then.

THE ORDINANCE OF 1787.

The ordinance of July 13, 1787, anticipating the constitutional compact, contained the following proviso to the sixth article:

"Provided always that any person escaping into the same, (said Northwestern Territory,) from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid."—[1 U. S. Statutes at Large, p. 51.]

THE CONSTITUTION.

The Constitution of the United States contains the following provision, adopted in the convention of 1787, *unanimously*:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."—[Article IV, sec. 2, § 3]

Although this provision elicited no discussion, except as to phraseology, and no resistance from any quarter, it is yet well understood that without it no Union ever could have been formed.

THE FUGITIVE-SLAVE ACT OF 1793.

The second Congress of the United States passed, on the 12th of February, 1793, the following act to carry out the foregoing provision of the Constitution:

An act respecting fugitives from justice and persons escaping from the service of their master.

SECTION 3. *And be it also enacted*, That when a person held to labor in any of the United States, or in either of the Territories on the Northwest, or south of the river Ohio, under the laws thereof, shall escape into any other of the States or Territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested, doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the State or Territory from which he or she fled.

SEC. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given or declared, or shall harbor or conceal such person after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars; which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same, saving, moreover, to the person claiming such labor or service, his right of action for or on account of the said injuries, or either of them.

This act was approved by GEORGE WASHINGTON on the 12th of February, 1793.

In the Senate, among whose members at that time were Oliver Ellsworth, Roger Sherman,* Rufus King, James Monroe, and Philemon Dickinson, it passed unanimously on the 18th of January, 1793. In the House it passed after but little discussion, (no part of which was deemed important enough to be reported,) by the following vote:

YEAS.—Fisher Ames, John Baptist Ashe, Abraham Baldwin, Robert Barnwell, Egbert Benson, Elias Boudinot, Shearjashub Bourne, Benjamin Bourne, Abraham Clark, Jonathan Dayton, Wm. Findley, Thomas Fitzsimons, Elbridge Gerry, Nicholas Gilman, Benjamin Goodhue, James Gordon, Christopher Greenup, Andrew Gregg, Samuel Griffin, William Barry Grove, Thomas Hartley, James Hillhouse, William Hindman, Daniel Huger, Israel Jacobs, Phillip Key, Aaron Kitchell, Amasa Learned, Richard Bland Lee, George Leonard, Nathaniel Macon, Andrew Moore, Frederick Augustus Muhlenberg, William Vans Murry, Alexander D. Orr, John Page, Cornelius C. Schoonmaker, Theodore Sedgwick, Peter Sylvester, Israel Smith, William Smith, John Steel, Thomas Sumpter, Thomas Tudor Tucker, Jeremiah Wadsworth, Alexander White, Hugh Williamson, and Francis Willis—48.

NAYS.—Samuel Livermore, John Francis Mercer, Nathaniel Niles, Josiah Parker, Jonathan Sturges, George Thatcher, and Thomas Tredwell—7.—[3 Annals of Congress, 861.]

THE BILL OF 1818.

For many years the constitutionality of this act was never doubted; nor till about the time of the "Missouri question" was there any attempt to evade it. At the session of 1817-'18, complaints being made of the inefficiency of the act of 1793, the House of Representatives, after several days of animated debate, passed a bill quite as stringent and very similar to the act of 1850. The vote upon the engrossment of the bill stood, yeas 86, nays 55; on the passage of the bill, yeas 84, nays 69. Not a few of those voting in the affirmative were from the free States.—[Annals of Congress, 1817-'18, pp. 831, 840.]

In the Senate the bill was elaborately discussed for some ten days and finally passed, with sundry minor amendments, by a vote of yeas 17, nays 13; among the yeas, Nath. Macon, of North Carolina, John J. Crittenden, of Kentucky, and Harrison Gray Otis, of Massachusetts.—[Annals, p. 262.]

The amendments were never acted upon in the House, and thus the bill failed.

In 1843 the constitutional provision and the act of 1793, to carry it out, were passed upon by the Supreme Court in the case of Prigg *vs.* The State of Pennsylvania, 16 Peters' Reports, 608. Judge Story, delivering the opinion of the court, and referring to Art. 4, § 2, of the Constitution, said:

* Messrs. Ellsworth and Sherman were members of the old Congress of the Confederation.

"The clause manifestly contemplates the existence of a positive unqualified right on the part of the owner of the slave, which no State law or regulation can in any way qualify, regulate, control, or restrain. The slave is not to be discharged from service or labor in consequence of any State law or regulation. The question can never be, how much the slave is discharged from, but whether he is discharged from any, by the natural or necessary operation of State laws or State regulations. The question is not one of quantity or degree, but of withholding or controlling the incidents of a positive and absolute right.

"If this be so, then all the incidents to the right attach also; the owner must therefore have the right to seize and repossess the slave, which the local laws of his own State confer upon him as property.

"Upon this ground we have not the slightest hesitation in holding that, under and in virtue of the Constitution, the owner of a slave is clothed with entire authority, in every State of the Union, to seize and recapture his slave, whenever he can do it, without any breach of the peace or any illegal violence. In this sense and to this extent this clause of the Constitution may properly be said to execute itself, and to require no aid from legislation, State or national.

"If the clause of the Constitution had stopped at the mere recognition of the right without providing or contemplating any means by which it might be established and enforced, in cases where it did not execute itself, it is plain that it would have been, in a great variety of cases, a delusive and empty annunciation.

"And this leads us to the consideration of the other part of the clause, which implies at once a guarantee and duty. It says: 'But he (the slave) shall be delivered up on claim of the party to whom such labor or service is due.' By whom to be delivered up? In what mode to be delivered up? How, if a refusal takes place, is the right of delivery to be enforced? Upon what proofs?

"If, indeed, the Constitution guarantees the right, and if it requires the delivery upon the claim of the owner, (as cannot well be doubted,) the natural inference certainly is that the national government is clothed with the appropriate authority and functions to enforce it. The fundamental principle applicable to all cases of this sort would seem to be that where the end is required the means are given, and where the duty is enjoined the ability to perform it is contemplated to exist on the part of the functionaries to whom it is intrusted."

"It is historically well known that the object of the clause in the Constitution, relating to persons owing service and labor in one State, escaping into another, was to secure to the citizens of the slaveholding States the complete right and title of ownership in their slaves as property, in every State of the Union, into which they might escape from the State where they were held in servitude.

"The full recognition of this right and title was indispensable to the security of this species of property in all the slaveholding States; and, indeed, was so vital to the preservation of their domestic interests and institutions that it cannot be doubted that it constituted a fundamental article, without the adoption of which the Union could not have been formed. Its true design was to guard against the doctrines and principles prevailing in the non-slaveholding States, by preventing them from intermeddling with, or obstructing, or abolishing the rights of the owners of slaves. The clause in the Constitution relating to fugitives from labor manifestly contemplates the existence of a positive, unqualified right, on the part of the owner of the slave, which no State law or regulation can in any way qualify, regulate, control, or restrain. Any State law or regulation which interrupts, limits, delays, or postpones the rights of the owner to the immediate command of his service or labor, operates, *pro tanto*, a discharge of the slave therefrom. The owner of a fugitive slave has the same right to seize and take him in a State to which he has escaped, that he has in the State from which he fled. The court have not the slightest hesitation in holding that under and in virtue of the Constitution, the owner of the slave is clothed with the authority, in every State of the Union, to seize and recapture his slave.

"The right to seize and retake fugitive slaves, and the duty to deliver them up, in whatever State of the Union they may be found, is, under the Constitution, recognized as an absolute, positive right and duty, pervading the whole Union with an equal and supreme force, uncontrolled and uncontrollable by State sovereignty and State legislation. The right and duty are coextensive and uniform in remedy and operation throughout the whole Union. The owner has the same security, and the same remedial justice, and the same exemption from State regulations and control, through however many States he may pass with the fugitive slave in his possession, *in transitu* to his domicil."

The Supreme Court having in this case decided that *State* officers were not *obliged* to execute the act of 1793, several of the States began to pass laws prohibiting their officers from acting in fugitive-slave cases, and refusing also the use of their jails for the confinement of runaway slaves. The *repeal* of the act of 1793 was also vigorously agitated, its authority was denied, and even the binding force of the constitutional provision for the reclamation of fugitive slaves was itself called in question. In 1843 a convention of abolitionists and free-soilers, conspicuous among whom was Salmon P. Chase, of Ohio, assembled at Buffalo, New York, unanimously adopted the following resolution:

"*Resolved*, That we hereby give it to be distinctly understood by this nation and the world, that the abolitionists, considering that the strength of our cause lies in its righteousness, and our hopes for it in our conformity to the laws of God and our support for the rights of man, we owe to the sovereign Ruler of the Universe, as a proof of our allegiance to Him, in all our

civil relations and offices, whether as friends, citizens, or as public functionaries, sworn to support the Constitution of the United States, to regard and treat the third clause of the instrument, *whenever applied in the case of a fugitive slave law, as* UTTERLY NULL AND VOID, and consequently *as forming no part of the Constitution* of the United States, whenever we are called upon as sworn to support it."

The agitation growing out of the territorial slavery question in 1846-'7-'8-'9 greatly aggravated the hostility to the rendition of fugitive slaves under the act of 1793, or indeed under any act, or under the Constitution itself; and by 1850, through State legislation, the refusal of State officers to act, or the lawless violence of mobs, the execution of the act of 1793 and reclamation of runaway slaves, became next to impossible in many of the free States of the Union.

On the 1st of February, 1850, WILLIAM DENNISON, now governor of Ohio, introduced the following as a part of a part of a preamble to certain resolutions into the Ohio State senate, of which he was then a member:

"4. That *no more effectual provision* ought to be made by law for the recapture, restitution, or delivery of escaping slaves, and *that it is by no means clear* that sound policy does not *demand the* MODIFICATION OF EXISTING LAWS *on that subject.*"

WILLIAM H. SEWARD, also, *two years before the act of* 1850, in his speech in 1848, at Cleveland, Ohio, boldly recommended DISOBEDIENCE to the law of 1793, and to the Constitution itself, in these words:

"It is writen in the Constitution of the United States, *in violation of Divine law*, that we shall surrender the fugitive slave who takes refuge at our fireside from his relentless pursuer. You blush not at these things because they have become as familiar as household words. * * * * * Reform your own code; EXTEND A CORDIAL WELCOME TO THE FUGITIVE WHO LAYS HIS WEARY LIMBS AT YOUR DOOR, AND DEFEND HIM AS YOU WOULD YOUR HOUSEHOLD GODS; *correct your own error that slavery has any constitutional guarantee* which may not be released and ought not to be relinquished."

THE FUGITIVE-SLAVE ACT OF 1850.

Under these circumstances the question naturally and necessarily came up for consideration at the session of 1849-'50. It was the subject of one of Mr. Clay's celebrated resolutions, discussed by him February 5 and 6, 1850. In the course of his remarks he said:

"Upon this subject I do think that we have just and serious cause of complaint against the free States. I think that they have failed in fulfilling a great obligation, and the failure is precisely upon one of those subjects which in its nature is most irritating and inflamatory to those who live in slave States. * * * * I think that the *existing laws* for the recovery of fugitive slaves, and the restoration and delivery of them to their owners, *being often inadequate and ineffective*, it is incumbent upon Congress to assist in allaying this subject, so irritating and disturbing to the peace of this Union. * * * * It (the constitutional provision) extends to every *man* in the Union, and devolves upon him the obligation to assist in the recovery of a fugitive slave from labor who takes refuge in or escapes into one of the free States."—[1 Appendix to Congressional Globe, 1849-'50, pp. 122, 123.]

Mr. Webster in his great speech of March 7, 1850, said:

"But I will state these complaints, especially one complaint of the South, which has, in my opinion, just foundation; and that is, that there has been found at the North, among individuals and among the legislatures of the North, a disinclination to perform fully their constitutional duties in regard to the return of persons bound to service who have escaped into free States. In that respect, it is my judgment, that the South is right, and the North is wrong. Every member of every northern legislature is bound, by oath, like every other officer in the country, to support the Constitution of the United States; and this article of the Constitution, which says to these States they shall deliver up fugitives from justice, is as binding in honor and conscience as any other article. No man fulfils his duty in any legislature who sets himself to find excuses, evasions, or escapes from this constitutional obligation. Therefore, I regret, sir, that here is a ground of complaint against the North, well founded, which ought to be removed—which it is now in the power of the different departments of this government to remove, which calls for the enactment of proper laws authorizing the judicature of this government, in the several States, to do all that is necessary for the recapture of fugitive slaves, and for the restoration of them to those who claim them. Whenever I go and whenever I speak on the subject, and when I speak here, I desire to speak to the whole North. I say that the South has been injured in this respect, and has a right to complain; and the North has been too careless of what I think the Constitution peremptorily and emphatically enjoins upon it as a duty."—[5 Webster's Works, pp. 354, 355.]

These extracts sufficiently show the absolute necessity for additional and stringent legisla-

tion upon this subject; and in aid of the act of 1793, several bills were presented; and in September, 1850, the following, known as the "Fugitive-Slave Act of 1850," became the law of the land:

"An act to amend and supplementary to the act entitled "An act respecting fugitives from justice and persons escaping from the service of their masters," approved February 12, 1793.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the persons who have been or may hereafter be appointed commissioners in virtue of any act of Congress, by the circuit courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace or other magistrate of any of the United States may exercise in respect to offenders for any crime or offence against the United States by arresting, imprisoning, or bailing the same, under and by virtue of the thirty-third section of the act of the 24th of September, 1789, entitled 'An act to establish the judicial courts of the United States,' shall be, and are hereby, authorized and required to exercise and discharge all the powers and duties conferred by this act.

"Sec. 2. *And be it further enacted*, That the superior court of each organized Territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes, which is now possessed by the circuit court of the United States; and all commissioners who shall hereafter be appointed for such purposes by the superior court of any organized Territory of the United States, shall possess all the powers and exercise all the duties conferred by law upon commissioners appointed by the United States for similar purposes, and shall moreover exercise and discharge all the powers and duties conferred by this act.

"Sec. 3. *And be it further enacted*, That the circuit courts of the United States, and the superior courts of each organized Territory of the United States, shall, from time to time, enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

"Sec. 4. *And be it further enacted*, That the commissioners above named shall have concurrent jurisdiction with the judges of the circuit and district courts of the United States in their respective circuits and districts within the several States, and the judges of the superior courts of the Territories, severally and collectively, in term-time and vacation; and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or Territory from which such persons may have escaped or fled.

"Sec. 5. *And be it further enacted*, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of such claimant, on the motion of such claimant, by the circuit or district court for the district of such marshal; and after arrest of such fugitive by such marshal or his deputy, or whilst at any time in his custody under the provisions under this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant for the full value of the service or labor of said fugitive in the State, Territory, or district whence he escaped; and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the Constitution of the United States and of this act, they are hereby authorized and empowered, within their counties, respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid to summon and call to their aid the bystanders, or posse comitatus of the proper county, when necessary to insure a faithful observance of the clause of the Constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law whenever their services may be required, as aforesaid, for that purpose; and said warrants shall run and be executed by said officers anywhere in the State within which they are issued.

"Sec. 6. *And be it further enacted*, That when a person held to service or labor in any State or Territory of the United States has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized by power of attorney, in writing, acknowledged and certified under the seal of some legal officer or court of the State or Territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge,

or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which such service or labor was due, to the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid. In no trial or hearing, under this act, shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first section mentioned shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

"SEC. 7. *And be it further enacted*, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue or attempt to rescue such fugitive from service or labor from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared, or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid, or shall harbor or conceal such fugitive so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which such offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars for each fugitive so lost as aforesaid, to be recovered by action of debt, in any of the district or territorial courts aforesaid, within whose jurisdiction the said offence may have been committed.

"SEC. 8. *And be it further enacted*, That the marshals, their deputies, and the clerks of the said district and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in the whole by such claimant, his agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his or her agent or attorney; or a fee of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid in either case by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioners for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each for each person he or they may arrest and take before any such commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner; and in general for performing such other duties as may be required by such claimant, his or her attorney, or agent, or commissioner in the premises, such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitives from service or labor be ordered to be delivered to such claimants by the final determination of such commissioner or not.

"SEC. 9. *And be it further enacted*, That upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he

can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent or attorney; and to this end the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require; the said officer and his assistants, while so employed, to receive the same compensation and to be allowed the same expenses as are now allowed by law for transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the Treasury of the United States.

"SEC. 10. *And be it further enacted*, That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party; whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being produced in any other State, Territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned; and upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record, of the identity of the person escaping, he or she shall be delivered up to the claimant; and the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped: *Provided*, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid; but in its absence the claim shall be heard and determined upon other satisfactory proofs competent in law.

"HOWELL COBB,
"*Speaker of the House of Representatives.*
"WILLIAM R. KING,
"*President of the Senate pro tempore.*

"APPROVED, *September* 18, 1850.

"MILLARD FILLMORE."

The foregoing "Fugitive-Slave Act" was signed by MILLARD FILLMORE, President of the United States, September 18, 1850, having first been approved by the Cabinet, among whom were Thomas Corwin, of Ohio, William A. Graham, of North Carolina, John J. Crittenden, of Kentucky, and Daniel Webster, of Massachusetts. Mr. Crittenden, as Attorney General, gave a written opinion at length, sustaining the constitutionality of the act. It had passed the Senate on the 23d of August, 1850, by the following vote:

YEAS.—Messrs. Atchison, Badger, Barnwell, Bell, Berrien, Butler, Davis, of Mississippi, Dawson, Dodge, of Iowa, Downs, Foote, Houston, Hunter, Jones, King, Mangum, Mason, Pearce, Rusk, Sebastian, Soulé, Spruance, Sturgeon, Turney, Underwood, Wales, and Yulee—27.

NAYS—Messrs. Baldwin, Bradbury, Chase, Cooper, Davis, of Massachusetts, Dayton, Dodge, of Wisconsin, Greene, Smith, Upham, Walker, and Winthrop—12.

It passed the House September 12, 1850, by the following vote:

YEAS—Messrs. Albertson, Alston, Anderson, Ashe, Averett, Bay, Bayly, Beale, Bissell, Bowdon, Bowie, Bowlin, Boyd, Breck, Albert G. Brown, William J. Brown, Buel, Burt, George A. Caldwell, Joseph P. Caldwell, Clingman, W. R. W. Cobb, Colcock, Daniel, Deberry, Dimmick, Dunham, Edmundson, Eliot, Ewing, Featherson, Fuller, Gentry, Gerry, Gilbert, Gorman, Green, Hall, Hamilton, Haralson, Isham G. Harris, S. W. Harris, Thomas L. Harris, Haymond, Hibbard, Hilliard, Hoagland, Holladay, Holmes, Houston, Howard, Hubbard, Inge, Joseph W. Jackson, Andrew Johnson, James L. Johnson, Robert W. Johnson, Jones, Kaufman, Kerr, La Sére, Leffer, Littlefield, Job Mann, Marshall, Mason, McClernand, McDonald, McGaughey, McLanahan, Finis E. McLean, McMullen, McQueen, McWillie, Meade, Miller, Milison, Morton, Orr, Outlaw, Owen, Parker, Peaslee, Phelps, Powell, Richardson, Robbins, Ross, Savage, Sedden, Shepperd, Stanly, Frederick P. Stanton, Richard H. Stanton, Taylor, Thomas, Jacob Thompson, James Thompson, John B. Thompson, Toombs, Venable, Walden, Wallace, Watkins, Wellborn, Wildrick, Williams, Woodward, and Young—109.

NAYS.—Messrs. Alexander, Allen, Baker, Bennett, Bingham, Booth, Briggs, Burrows, T. B. Butler, Joseph Cable, Calvin, Campbell, Carter, Chandler, Clark, Cole, Corwin, Crowell, Dickey, Disney, Doty, Duncan, Dixon, Durkee, Nathan Evans, Fitch, Fowler, Freedley, Giddings, Gott, Gould, Holloway, Hampton, Harlan, Hay, Hebard, Henry, Howe, Hunter, W. T. Jackson, Julian, George G. King, James G. King, John A. King, Preston King, Horace Mann, Matteson, McKissock, Meacham, Moore, Morris, Nelson, Otis, Pitman, Putnam, Reed, Robinson, Root, Rumsey, Sackett, Sawtelle, Schermerhorn, Schoolcraft, Silvester, Sprague, Thaddeus Stevens, Stetson, Thurman, Tuck, Underhill, Vinton, Waldo, Wentworth, Whittlesey, Wood, and Wright—76.

The act was immediately assailed with unexampled violence, and forcible resistance was several times attempted to its execution. No law was ever more grossly misrepresented. In several States its REPEAL has been made a party watchword; and as late as June, 1859, the republican State convention of Ohio passed the following resolution as a part of its platform:

"*Resolved*, That, proclaiming our determination rigidly to respect the constitutional obligations imposed upon the State by the federal compact, we maintain the union of the States, the rights of the States, and the liberties of the people; and in order to attain these important ends we demand the REPEAL of the fugitive-slave act of 1850, as it is subversive of both the rights of the States and the liberties of the people, and is *contrary to the plainest duties of humanity and justice*, AND ABHORRENT TO THE MORAL SENSE OF THE CIVILIZED WORLD."

When it is remembered that the act of 1850 differs from the act of 1793, passed by the second Congress, and approved by Washington, almost only as to any essential particular in committing the execution of its provisions to officers of the federal government instead of justices of the peace, constables, and sheriffs of the several States, the utter and shameless wickedness and hypocrisy of such violent denunciation will become perfectly apparent, showing that the real object of assault and abrogation is not the act of 1850, but the CONSTITUTIONAL PROVISION ITSELF.

Notwithstanding all this, the act met the distinct and unanimous approval of the great national conventions of both the democratic and whig parties in 1852. The former *resolved*:

"That the democratic party of the Union will abide by and adhere to a faithful execution of the acts known as the compromise measures settled by the last Congress, THE ACT FOR THE RECLAIMING OF FUGITIVES FROM SERVICE OR LABOR INCLUDED, which act being designed to carry out an express provision of the Constitution, *cannot with fidelity thereto be* REPEALED *or so changed as to destroy or impair its efficiency*.

The whig national convention a few weeks later resolved: "That the series of acts of the thirty-first Congress, commonly known as the compromise or adjustment, (THE ACT FOR THE RECOVERY OF FUGITIVES FROM LABOR INCLUDED,) are received and acquiesced in by the whigs of the United States as a *final settlement* in principle and substance of the subjects to which they relate, * * * and we will maintain this settlement as essential to the nationality of the whig party *and the integrity of the Union*."

Speaking of this law in 1851, Mr. Webster, then Mr. Fillmore's Secretary of State, said:

"I undertake as a lawyer and on my professional character to say to you, and to all, that THE LAW OF 1850 IS DECIDEDLY MORE FAVORABLE TO THE FUGITIVE THAN GENERAL WASHINGTON'S LAW OF 1793."—[2 Websters' Works, 558.]

About the same time also he declared in a public speech that "no respectable lawyer" would question its constitutionality.

The constitutionality in all its provisions of the fugitive-slave act of 1850 has been affirmed by every judicial tribunal, State and United States, one perhaps excepted. Among the State supreme courts which have sustained it, are those of Massachusetts, Indiana, California, and Ohio. Its execution has also been repeatedly enforced where resistance has been attempted.

The question of its constitutionality was presented directly to the Supreme Court of the United States in BOOTH'S case, reported in 21 Howard's Supreme Court Reports, 506, and the act in all its provisions was sustained by all the judges, Mr. Justice MCLEAN included, as follows:

DECISION OF THE COURT.

"1. The process of a State court or judge has no authority beyond the limits of the sovereignty which confers the judicial power.

2. A *habeas corpus* issued by a State judge or court has no authority within the limits of the sovereignty assigned by the Constitution of the United States. The sovereignty of the United States and of a State are distinct and independent of each other within their respective spheres of action, although both exist and exercise their powers within the same territorial limits.

3. When a writ of *habeas corpus* is served on a marshal or other person having a prisoner in custody under the authority of the United States, it is his duty, by a proper return, to make known to the State judge or court the authority by which he holds him; but at the same time it is his duty not to obey the process of the State authority, but to obey and execute the process of the United States.

4. This court has appellate power in all cases arising under the Constitution and laws of the United States, with such exceptions and regulations as Congress may make, whether the cases arise in a State court or an inferior court of the United States; and, under the act of Congress of 1789, when the decision of the State court is against the right claimed under the Constitution or laws of the United States, a writ of error will lie to bring the judgment of the State court before this court for re-examination and revision.

5. The act of Congress of September 18, 1850, usually called the fugitive-slave law, is constitutional in all its provisions.

6. The commissioner appointed by the district court of the United States for the district of Wisconsin had authority to issue his warrant and commit the defendant in error for an offence against the act of September 18, 1850.

7. The district court of the United States had exclusive jurisdiction to try and punish the offence, and the validity of its proceedings and judgments cannot be re-examined and set aside by any other tribunal."

TRIAL BY JURY.

A very common and specious objection to the act of 1850, is that it does not provide for a trial of the fugitive by jury where arrested. Never was an objection more unfounded. Let it be remembered that it applies to all preceding laws. No trial by jury was provided for by the New England compact of 1643; none by the ordinance of 1787; none by the constitutional provision itself; none by the act of 1793; none in the bill of 1818; and none in any of the State laws passed in early times in aid of the act of 1793. None is required in the case of fugitives from justice, the recovery of whom is provided for in the same section of the Constitution; and none in any of the extradition treaties between the United States and foreign governments; and no provision ever is made in either case for the trial of the accused by jury in the State or country to which he is returned. This is left to the law of that State or country alone.

But the Constitution itself furnishes a reason absolutely conclusive why there can be and ought to be no trial by jury in the State where the fugitive slave is arrested. The language of the section is: "*Persons held to service or labor in one State* UNDER THE LAWS THEREOF." Now neither judge nor jury of another State can take judicial notice of the laws of that State whence the negro fled. No copy is furnished them, as in the case of laws made by their own State; they have no right to interpret or sit in judgment upon the laws of another State, and no appeal, writ of error, or other mode of reviewing their decision in the courts of that other State is provided for. As in the case of the fugitive from justice, the question of guilt must be passed upon under the laws and by the courts of the State whence he fled, so in the case of a fugitive slave, the question whether he owes labor or service must in like manner be finally determined by the courts and juries of the State whence he escaped, and "*under the laws thereof.*" A State which prohibits slavery has no right to impanel a jury of its own citizens to settle the question of servitude in a State which establishes and regulates it. But it must be remembered that in *every slaveholding State in the Union without exception* ample provision exists for trying *by jury* "under the laws thereof" the right to freedom of every slave in the South, and that such trials are of frequent occurrence. Upon this subject Mr. Clay said in the Senate on the 13th of May, 1850:

"I have never known an instance of a failure on the part of a person thus suing (for freedom) to procure a verdict and judgment in his favor, if there were even slight grounds in support of his claim. And, sir, so far is the sympathy in behalf of a person suing for his freedom carried, that few members of the bar appear against them."—[1 Appendix to Cong. Globe, 1849--'50, p. 572.]

And he adds that although he had himself "many times" appeared for those who claimed their freedom, yet he never had appeared but once against them; and that such was the general course of the liberal and eminent among the southern bar.

Speaking of the constitutional provision upon this subject, Judge Story says:

"It is obvious that these provisions for the arrest and removal of fugitives of both classes contemplate *summary ministerial proceedings*, and not the ordinary course of judicial investigations. * * * * And in the cases of fugitive slaves there would seem to be the same necessity of requiring only *prima facie* proofs of ownership, without putting the party to a formal assertion of his rights *by a suit* at common law."—[2 Story on the Constitution, § 1812.]

In his celebrated report from the Committee of Thirteen, May, 1850, Mr. Clay says;

"Numerous petitions have been presented praying for a trial by jury, in the case of arrest of fugitives from service or labor, in the non-slaveholding States. It has been already shown that this would be entirely contrary to practice and uniform usage in similar cases. Under the name of a popular and cherished institution—an institution, however, never applied in cases of preliminary proceeding, and only in cases of final trial—there would be a complete, mockery of justice, so far as the owner of the fugitive is concerned. If the trial by jury be admitted it would draw after it its usual consequences, of continuance from time to time, to bring evidence from different places; of second, or new trials, in cases where the jury hung ro the verdict is set aside; and of revisals of the verdict, and conduct of the jurics by competent tribunals. During the progress of these dilatory and expensive proceedings what security is there as to the custody and forthcoming of the fugitive upon their termination? And if, finally, the claimant should be successful, contrary to what happens in ordinary litigation between free persons, he would have to bear all the burdens and expense of the litigation without indemnity, and would learn by sad experience that he had by far better have abandoned his right in the first instance than to establish it at such unremunerated cost and heavy sacrifice."

Speaking of the bill itself he says:

"If, in its practical operation, it shall be found insufficient, and if no adequate remedy can be devised for the restoration to their owners of fugitive slaves, those owners will have a just title to indemnity out of the treasury of the United States."—[Report of the Committee of Thirteen, May 8, 1850; 1 Senate Reports, No. 123, p. 123.)

Chief Justice SHAW, delivering the opinion of the supreme court of Massachusetts, in 1851, (7 Cushing's Reports, 285,) says:

"Since the argument in court, this morning, I am reminded by one of the counsel for the petitioner that the law in question ought to be regarded as unconstitutional, because it makes no provision for *a trial by jury*. *We think that this cannot vary the result.* The law of 1850 stands in this respect precisely on the same ground with that of 1793, and the same grounds of argument which tend to show the unconstitutionality of one apply with equal force to the other, and the same answer must be made to them."

The foregoing remarks and citations show conclusively how utterly unreasonable and unfounded is the objection to the act of 1850, because it does not provide for trial by jury.

These, then, are the compacts and laws, and the history and exposition of them from beginning to end, which nine of the free States of this Union, forgetful of every duty and every constitutional obligation, have treasonably and wickedly attempted to NULLIFY OR OBSTRUCT by personal liberty bills and *habeas corpus* acts, and sometimes even by refusal of State executives to discharge the duties imposed upon them by State and federal laws. These nine States are, Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Michigan, Wisconsin, and Iowa. In every other free State they have existed and been repealed by the democratic party, or have been attempted and failed. In Ohio they were enacted by the republican legislature of 1856, and repealed by a democratic legislature in 1858, after they had brought on a conflict of authority between the State and federal courts, ending in actual collision, and almost in bloodshed.

PART II.

THE DRED SCOTT CASE.

Next to the fugitive-slave act of 1850 the "DRED SCOTT CASE" has been the subject of the most reckless and persistent abuse and misrepresentation. Below will be found what lawyers call the *syllabus* of the case in full, and just as it stands in the 19th volume of Howard's United States Supreme Court Reports, page 393. The *syllabus* of a case is a statement of the points which the court really decide. It contains the *conclusions* at which the court arrives after argument and consideration of the case. What is called the "opinion" of the court is the reasoning by which these conclusions are reached, and is commonly the work of a single judge, and contains frequently what are called *obiter dicta*, or things said in passing, which form no part of the *decision* of the court. The "opinion" in this case was pronounced by Chief Justice TANEY. The "decision" was concurred in by seven of the nine judges of which the Supreme Court consists, viz: Taney, Catron, Daniel, Greer, Wayne, Nelson, and Campbell. Two judges dissented, McLean and Curtis. The "opinion," by Judge Taney, is very able, and might be read with instruction by every man in the United States. It, too, has been grossly misrepresented; among other things in this, that it is continually quoted as affirming that the "negro has no rights which the white man is bound to respect." This statement is a deliberate and wicked perversion of the truth. Judge Taney says, as a matter of historic narrative, and it is as true of New England as of South Carolina, that *there was a time*, some eighty years ago, when this sentiment prevailed. He nowhere affirms it as an existing fact.

In the Dred Scott case *all* that is in the *syllabus* below *were points or questions actually before the court and in the record*, and in strict accordance with uniform judicial usage were decided by it. They did not go out of the record to pass upon questions not before them. All statements to the contrary are utterly unfounded.

DRED SCOTT, PLAINTIFF IN ERROR, vs. JOHN F. A. SANFORD.

DECISION OF THE COURT.

1. Upon a writ of error to a circuit court of the United States the transcript of the record of all the proceedings in the case is brought before this court, and is open to its inspection and revision.

2. When a plea to the jurisdiction, in abatement, is overruled by the court upon demurrer, and the defendant pleads in bar, and upon these pleas the final judgment of the court is in his favor; if the plaintiff brings a writ of error, the judgment of the court upon the plea in abatement is before this court, although it was in favor of the plaintiff; and if the court erred in overruling it, the judgment must be reserved, and a mandate issued to the circuit court to dismiss the case for want of jurisdiction.

3. In the circuit courts of the United States the record must show that the case is one in which, by the Constitution and laws of the United States, the court had jurisdiction; and if this does not appear, and the court gives judgment either for plaintiff or defendant, it is error, and the judgment must be reserved by this court; and the parties cannot, by consent, waive the objection to the jurisdiction of the circuit court.

4. A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a "citizen" within the meaning of the Constitution of the United States.

5. When the Constitution was adopted they were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its "people" or "citizens." Consequently the special rights and immunities guaranteed to citizens do not apply to them. And not being "citizens" within the meaning of the Constitution, they are not entitled to sue in that character in a court of the United States, and the circuit court has not jurisdiction in such a suit.

6. The only two clauses in the Constitution which point to this race, treat them as persons whom it was morally lawful to deal in as articles of property and to hold as slaves.

7. Since the adoption of the Constitution of the United States no State can by any subsequent law make a foreigner or any other description of persons citizens of the United States, nor entitle them to the rights and privileges secured to citizens by that instrument.

8. A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing with its own citizens, as to all the rights and privileges enjoyed by them within its dominion and by its laws. But that will not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State.

9. The change in public opinion and feeling in relation to the African race, which has taken place since the adoption of the Constitution, cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted.

10. The plaintiff having admitted by his demurrer to the plea in abatement, that his ancestors were imported from Africa and sold as slaves, he is not a citizen of the State of Missouri according to the Constitution of the United States, and was not entitled to sue in that character in the circuit court.

11. This being the case the judgment of the court below, in favor of the plaintiff on the plea in abatement, was erroneous.

II.

1. But if the plea in abatement is not brought up by this writ of error the objection to the citizenship of the plaintiff is still apparent on the record, as he himself, in making out his case, states that he is of African descent, was born of a slave, and claims that he and his family become entitled to freedom by being taken by their owner to reside in a Territory where slavery is prohibited by an act of Congress; and that, in addition to this claim, he himself became entitled to freedom by being taken to Rock Island, in the State of Illinois; and being free when he was brought back to Missouri, he was, by the laws of that State, a citizen.

2. If, therefore, the facts he states do not give him or his family a right to freedom the plaintiff is still a slave, and not entitled to sue as a "citizen;" and the judgment of the circuit court was erroneous on that ground also, without any reference to the plea in abatement.

3. The circuit court can give no judgment for the plaintiff or defendant in a case where it has not jurisdiction, no matter whether there be a plea in abatement or not; and unless it appears upon the face of the record, when brought here by writ of error, that the circuit court had jurisdiction, the judgment must be reversed.

The case of Capron *vs.* Van Noorden (2 Cranch, 126) examined, and the principles thereby decided, reaffirmed.

4. When the record, as brought here by the writ of error, does not show that the circuit court had jurisdiction, this court has jurisdiction to revise and correct the error, like any other error in the court below. It does not and cannot dismiss the case for want of jurisdiction here; for that would leave the erroneous judgment of the court below in full force, and the party injured without remedy; but it must reverse the judgment, and, as in other cases of reversal, send a mandate to the circuit court to conform its judgment to the opinion of this court.

5. The difference of the jurisdiction in this court in the cases of writs of error to State courts and circuit courts of the United States pointed out, and the mistakes made as to the jurisdiction of this court in the latter case by confounding it with its limited jurisdiction in the former.

6. If the court reverses a judgment upon the ground that it appears by a particular part of the record that the circuit court had not jurisdiction, it does not take away the jurisdiction of this court to examine into and correct, by a reversal of the judgment, any other errors, whether as to the jurisdiction or any other matter where it appears, from other parts of the record, that the circuit court had fallen into error. On the contrary, it is the daily and familiar practice of this court to reverse, on several grounds, where more than one error appears to have been committed; and the error of a circuit court in its jurisdiction stands on the same ground, and is to be treated in the same manner as any other error upon which its judgment is founded.

7. The decision, therefore, that the judgment of the circuit court upon the plea in abatement is erroneous, is no reason why the alleged error apparent in the exception should not also be examined, and the judgment be reversed on that ground also, if it discloses a want of jurisdiction in the circuit court.

8. It is often the duty of this court, after having decided that a particular decision of the circuit court was erroneous, to examine into other alleged errors, and to correct them if they are found to exist. And this has been uniformly done by this court when the questions are in any degree connected with the controversy, and the silence of the court might create doubts which would lead to further and useless litigations.

III.

1. The facts upon which the plaintiff relies did not give him his freedom and make him a citizen of Missouri.

2. The clause in the Constitution authorizing Congress to make all needful rules and regulations for the government of the territory and other property of the United States, applies only to territory within the chartered limits of some one of the States when they were colonies of Great Britain, and which was surrendered by the British government to the old confederation of the States in the treaty of peace. It does not apply to territory acquired by the present federal government by treaty or conquest from a foreign nation. The case of the American and Ocean Insurance Companies vs. Canter, (1 Peters, 511,) referred to and examined, showing that the decision in this case is not in conflict with that opinion, and that the court did not in the case referred to decide upon the construction of the clause of the Constitution above mentioned, because the case before them did not make it necessary to decide the question.

3. The United States under the present Constitution cannot acquire territory to be held as a colony to be governed at its will and pleasure; but it may acquire territory which at the time has not a population that fits it to become a State, and may govern it as a territor until it has a population which, in the judgment of Congress, entitles it to be admitted as a State of the Union.

4. During the time it remains a territory Congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States, and may establish a territorial government, and the form of this local government must be regulated by the discretion of Congress, but with powers not exceeding those which Congress itself by the Constitution is authorized to exercise over citizens of the United States in respect to their rights of persons or rights of property.

IV.

1. The territory thus acquired is acquired by the people of the United States for their common and equal benefit, through their agent and trustee the federal government. Congress can exercise no power over the rights of persons or property of a citizen in the territory which is prohibited by the Constitution. The government and the citizens, whenever the territory is open to settlement, both enter it with their respective rights defined and limited by the Constitution. Congress has no right to prohibit the citizens of any particular State or States from taking up their homes there while it permits citizens of any other State to do so; nor has it a right to give privileges to one class of citizens which it refuses to another. The territory is acquired for their own equal and common benefit, and if open to any it must open to all upon equal and the same terms.

3. Every citizen has a right to take with him into the territory any article of property which the Constitution of the United States recognizes as property.

4. The Constitution of the United States recognizes slaves as property, and pledges the federal government to protect it; and Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind.

5. The act of Congress, therefore, prohibiting a citizen of the United States from taking with him his slaves when he removes to the territory in question to reside, is an exercise of authority over private property which is not warranted by the Constitution, and the removal of the plaintiff by his owner to that territory gave him no title to freedom.

V.

1. The plaintiff himself acquired no title to freedom by being taken by his owner to Rock Island in Illinois and brought back to Missouri. This court has heretofore decided that the status or condition of a person of African descent depended on the laws of the State in which he resided.

2. It has been settled by the decisions of the highest court in Missouri that, by the laws of that State, a slave does not become entitled to his freedom where the owner takes him to reside in a State where slavery is not permitted, and afterwards brings him back to Missouri.

Conclusion: It follows that it is apparent upon the record that the court below erred in its judgment on the plea in abatement, and also erred in giving judgment for the defendant, when the exception shows that the plaintiff was not a citizen of the United States; and as the circuit court had no jurisdiction either in the case stated in the plea in abatement, or in the one stated in the exception, its judgment in favor of the defendant is erroneous, and must be reversed.

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